

# **Banking, Commerce and Insurance Committee**

**One Hundred Second Legislature  
First Session – 2011**

## **SUMMARY OF 2011 LEGISLATION**

### *Committee Members*

**Senator Rich Pahls, *Chairperson***

**Senator Beau McCoy, *Vice Chairperson***

**Senator Mark Christensen**

**Senator Mike Gloor**

**Senator Chris Langemeier**

**Senator Dave Pankonin**

**Senator Pete Pirsch**

**Senator Dennis Utter**

### *Committee Staff:*

**William Marienau, *Committee Counsel***

**Janice Foster, *Committee Clerk***

## MEMORANDUM

TO: Members of the Legislature and  
Other Interested Persons

FROM: Senator Rich Pahls, Chairperson  
Banking, Commerce and Insurance Committee

DATE: July 5, 2011

RE: Summary of 2011 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all 2011 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2011 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel and Janice Foster, Committee Clerk.

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## BANKING AND FINANCE

### **LB74e (Pahls) Change provisions relating to banks and banking**

#### **Enacted**

**Operative February 23, 2011 (effective date of the bill), except sections 3, 8, and 9 become operative on August 27, 2011 (three calendar months after adjournment of the legislative session)**

This bill, introduced at the request of the Director of Banking and Finance, amends various sections regarding banking and finance. The bill provides, section by section, as follows:

#### **BANKING**

Section 1 amends section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section is amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011 by a federally chartered bank doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

#### **BUILDING AND LOAN ASSOCIATIONS**

Section 2 amends section 8-355, which is the “wild-card” statute for state-chartered savings and loan associations. This section is amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011 by a federal savings and loan association doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

#### **DEPARTMENT ASSESSMENTS AND FEES**

Section 3 amends section 8-602 to add an internal reference to subdivision (8) in order to clarify that applicants for credit card bank charters are responsible for examination, investigation, and hearing costs which may be incurred by the Department of Banking and Finance in connection with the application.

#### **CROSS INDUSTRY ACQUISITIONS AND MERGERS**

Section 4 amends section 8-1501 to modify the requirement that the Department of Banking and Finance provide notice of the filing of a cross-industry acquisition or merger application to all other financial institution offices located in the county or counties where the offices of the institution to be merged or acquired are located, by allowing financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

## CREDIT UNIONS

Section 5 amends section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This section is amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011 by a federal credit union doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

## MISCELLANEOUS PROVISIONS

Section 6 provides for operative dates. Sections 3, 8, and 9 become operative on August 27, 2011 (three calendar months after the adjournment of the legislative session) and sections 1, 2, 4 to 7, and 10 become operative on February 23, 2011 (the effective date of the bill).

Section 7 provides for the repealers of the amendatory sections subject to the emergency clause.

Section 8 provides for the repealer of the amendatory section not subject to the emergency clause.

Section 9 outright repeals section 8-132.01 of the Nebraska Banking Act which had allowed certain banks to develop a plan to amortize certain losses over seven years, because such authority no longer comports with accounting standards or federal reporting requirements.

Section 10 provides for the emergency clause.

The passed 49-0-0 with the emergency on February 16, 2011 and was signed by the Governor on February 22, 2011.

## **LB76e (Pahls) Adopt updated federal laws for securities, commodities, and consumer rental purchase agreements**

**Enacted**

**Effective February 23, 2011**

## OVERVIEW

This bill, introduced at the request of the Director of Banking and Finance, updates date references to various federal laws cited in the Securities Act of Nebraska, the Commodity Code, and the Consumer Rental Purchase Agreement Act. Date references ranging from 1993 to 2002, are changed to January 1, 2011, and therefore will take into account revisions adopted in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law in July 2010.

## SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 8-1101(14) of the Securities Act of Nebraska to adopt a January 1, 2011 reference to the following federal laws, which were previously referenced to December 31, 2000: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Advisers Act of 1940; the Investment Company Act of 1940; and the Commodity Exchange Act. This section repeals a reference to the federal Public Utility Holding Company Act of 1935 because that federal act has been repealed.

Section 2 amends section 8-1102(4) of the Securities Act of Nebraska to repeal a reference to the federal Public Utility Holding Company Act of 1935 because that federal act has been repealed.

Section 3 amends section 8-1111 of the Securities Act of Nebraska as follows: within subdivision (5), by adopting a January 1, 2011 reference to the Interstate Land Sales Full Disclosure Act, which was previously referenced to July 20, 2002; and within subdivisions (22)(a)(ii) and (iii), by correcting cross-references to subdivision (22) to subdivision (22)(a)(i).

Section 4 amends section 8-1704 of the Commodity Code to adopt a January 1, 2011 reference to the rules, regulations, or orders of the federal Commodity Futures Trading Commission, which was previously referenced to January 1, 1993.

Section 5 amends section 8-1707 of the Commodity Code to adopt a January 1, 2011 reference to the federal Commodity Exchange Act, which was previously referenced to January 1, 1993.

Section 6 amends section 69-2103 of the Consumer Rental Purchase Agreement Act to adopt a January 1, 2011 reference to the federal definitions of credit sale and lease contained in 12 C.F.R. 226.2(a)(16) and 12 C.F.R. 213.2(e), which were previously referenced to September 1, 2001.

Section 7 amends section 69-2104 of the Consumer Rental Purchase Agreement Act as follows: within subsection (2), by updating the initial section number of the federal Consumer Credit Protection Act from 15 U. S. C. 1635 to 15 U. S. C. 1601, and by adopting a January 1, 2011 reference to the federal Consumer Credit Protection Act, which was previously referenced to September 1, 2001; and within subsection (3), by adopting a January 1, 2011 reference to the federal Consumer Credit Protection Act, which was previously referenced to September 1, 2001.

Section 8 amends Section 69-2112(4) of the Consumer Rental Purchase Agreement Act by updating the initial section number of the federal Consumer Credit Protection Act from 15 U. S. C. 1635 to 15 U. S. C. 1601, and by adopting a January 1, 2011 reference to the federal Consumer Credit Protection Act, which was previously referenced to September 1, 2001.

Section 9 provides for the repealers of the amendatory sections.

Section 10 provides for the emergency clause.

The bill passed 49-0-0 with the emergency clause on February 16, 2011 and was signed by the Governor on February 22, 2011.

### **LB268 (Howard) Require return to the payee of insufficient funds checks**

#### **Pending in Committee**

This bill would enact a new section in the Nebraska Banking Act to provide that when a check, draft, or assignment of funds is deposited in a financial institution by the payee of the instrument and is refused by the financial institution of the drawer of the instrument, the financial institutions of the drawer and payee shall cause the instrument to be returned to the payee. The bill would provide that the instrument shall be returned in its entirety and in such a condition that all information identifying the drawer is legible.

The bill would provide that it shall be enforced by the Department of Banking and Finance and that a financial institution violating it shall be subject to a civil penalty of five hundred dollars.

## **BURIAL PRE-NEED SALES**

### **LB71 (Pahls) Change the definition of trustee under the Burial Pre-Need Sale Act**

#### **Pending in Committee**

This bill, introduced at the request of the Director of Insurance, would amend section 12-1102 of the Burial Pre-Need Sale Act to provide that the trustee, with which pre-need sale proceeds must be deposited, does not have to be a bank, trust company, building and loan association, or credit union located “within the state”.

### **LB551 (Schilz) Change the Burial Pre-Need Sale Act**

#### **Pending in Committee**

This bill would amend section 12-1106 of Burial Pre-Need Sale Act to provide that, at the request of a pre-need purchaser, the first “eight thousand five hundred” dollars, rather than the first “four thousand” dollars, paid by the pre-need purchaser which is placed in trust by the pre-need seller may be designated as irrevocable. The bill would provide that the Department of Health and Human Services shall increase such amount by the percentage change in the Consumer Price Index annually on September 1 beginning in 2012 rather than 2006.

## CORPORATIONS AND OTHER COMPANIES

### **LB315e (Langemeier) Permit organization as a corporation or professional corporation by a designated broker under the Nebraska Real Estate License Act**

**Enacted**

**Effective May 18, 2011**

This bill amends section 21-2024 of the Business Corporation Act and amends section 21-2201 of the Nebraska Professional Corporation Act and adds a new section to that act in order to provide that a designated broker under the Nebraska Real Estate License Act may be organized as a business corporation or a professional corporation.

The bill passed 42-0-7 with the emergency clause on May 11, 2011 and was signed by the Governor on May 17, 2011.

NOTE: LR238 (Langemeier) calls on the Banking, Commerce and Insurance Committee to study whether Nebraska should update its statutory provisions regarding the business organization of firms and individuals rendering professional services.

### **LB317 (Conrad) Adopt the Nebraska Revised Uniform Unincorporated Nonprofit Association Act**

**Pending in Committee**

This bill would enact the Nebraska Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) based on the Revised Uniform Unincorporated Nonprofit Association Act as adopted by the National Conference of Commissioners in 2008 and recommended to the states for enactment.

RUUNA provides a basic comprehensive legal framework governing unincorporated nonprofit associations. It addresses the following issues: (1) definition of the types of organizations covered; (2) the relation of the act to other existing laws; (3) the recognition of an unincorporated nonprofit association as a legal entity and the legal implications flowing from that status; (4) the contract and tort liability of an unincorporated nonprofit association and its members and managers; (5) internal governance, fiduciary duties, and agency authority; and (6) dissolution and merger.

RUUNAA makes it clear that an unincorporated nonprofit association is a legal entity, separate from its members and managers. It can own and convey interests in property and can sue and be sued in its own name.

RUUNAA provides the same personal liability protection to members and managers of an unincorporated nonprofit association formed or operating in an enacting state as does a corporation.

RUUNAA provides a basic set of default voting and other governance rules that will be applicable unless the association has established practices or agreements to the contrary.

RUUNAA contains provisions setting forth the default rules for how members of an unincorporated nonprofit association are admitted, suspended, dismissed, expelled, or can resign; duties and liabilities of members and managers; their rights to financial and other information about an unincorporated nonprofit association; limitations on distributions from the association to members and manager; and the right to reimbursement, indemnification, and advancement of expenses.

RUUNAA contains provisions for dissolving and winding up an unincorporated nonprofit association. RUUNAA also authorizes unincorporated nonprofit associations to merge into other types of organizations and for other organizations to merge into unincorporated nonprofit associations.

NOTE: LR235 (Conrad) calls on the Banking, Commerce and Insurance Committee to study whether Nebraska should enact the Revised Uniform Unincorporated Nonprofit Association Act (2008).

### **LB639 (Schumacher) Change provisions relating to articles of organization and charging orders relating to limited liability companies**

#### **Pending in Committee**

This bill would amend the limited liability company statutes with regard to the restating of articles of organization and with regard to charging orders.

LB888 of 2010 provided for (1) the enactment of the Uniform Limited Liability Company Act (“new LLC act”) with an operative date of January 1, 2011 and (2) the termination of the Limited Liability Company Act (“old LLC act”) on January 1, 2013. Beginning January 1, 2011, LLCs must be formed under the new act and LLCs formed under the old act may, through a filing with the Secretary of State, become subject to the new act. Beginning January 1, 2013, all LLCs are subject to the new act.

The bill would amend section 21-112 of the new LLC act to repeal references to provisions repealed elsewhere in the bill and would amend section 21-118 of the new LLC act to provide that articles of organization filed under the old LLC act may be restated pursuant to provisions which provide for restatement of a certificate of organization filed under the new LLC act.

The bill would repeal uniform provisions regarding charging orders from section 21-142 of the new LLC act and parallel provisions from section 21-2654 of the old LLC act, all of which were enacted by LB888. The bill would then insert nonuniform provisions regarding charging orders which had been in section 21-2654 of the old LLC act prior to enactment of LB888.

## **INSURANCE**

### **LB22 (McCoy, Bloomfield) Adopt the Mandate Opt-Out and Insurance Coverage Clarification Act**

**Enacted**

**Operative January 1, 2012**

**Senator Priority Bill (McCoy)**

This bill enacts four new sections to be known as the Mandate Opt-Out and Insurance Coverage Clarification Act for the purposes of (1) affirmatively opting out of allowing qualified health insurance plans that cover abortions to participate in health insurance exchanges within Nebraska and (2) limiting the coverage of abortion in all health insurance plans, contracts, or policies delivered or issued for delivery in Nebraska.

The bill provides that no abortion coverage shall be provided by a qualified health insurance plan offered in this state through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act. The bill provides that this prohibition does not apply to coverage for an abortion necessary to prevent the death of the woman or for medical complications arising from an abortion. (Section 3(1) of the bill.)

The bill also provides that no health insurance plan, contract, or policy delivered or issued for delivery in this state shall provide coverage for an elective abortion except through an optional rider for which an additional premium is paid solely by the insured. (Section 3(2) of the bill.)

The bill provides for an operative date of January 1, 2012.

The bill passed 37-7-5 on May 12, 2011 and was signed by the Governor on May 18, 2011.

### **LB70e (Pahls) Change the Surplus Lines Insurance Act**

**Enacted**

**Operative July 21, 2011**

**Committee Priority Bill (Banking, Commerce and Insurance Committee)**

## OVERVIEW

This bill, introduced at the request of the Director of Insurance, amends various sections of the Surplus Lines Insurance Act in response to the requirements of the federal Non-Admitted and Reinsurance Reform Act (“NRRA”) passed as part of Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173).

## SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 44-5502 of the Surplus Lines Insurance Act to enact new definitions: “affiliated group;” “control;” “exempt commercial purchaser;” “home state;” “nonadmitted insurance;” and “qualified risk manager.” This section repeals the definition of “industrial insured.”

Section 2 amends section 44-5503 of the Surplus Lines Insurance Act to provide that the Director of Insurance may utilize the national insurance producer data base of the National Association of Insurance Commissioners for the licensure of an individual or an entity as a surplus lines producer and for the renewal of such license.

Section 3 amends section 44-5504 of the Surplus Lines Insurance Act to change the standard for the requirement of licensure as a surplus lines licensee under the act from placement of insurance for a risk located in Nebraska to placement of insurance for an insured whose home state is Nebraska. This section replaces the reference to “industrial insured” with a reference to “exempt commercial purchaser” for purposes of exemption from the licensure requirement.

Section 4 amends section 44-5505 of the Surplus Lines Insurance Act to require surplus lines licensees to retain in their records the address of the principal residence of the insured or the address at which the insured maintains its principal place of business.

Section 5 amends section 44-5506 of the Surplus Lines Insurance Act to provide that in order to carry out NRRA the Director of Insurance may enter into the Nonadmitted Insurance Multi-State Agreement in order to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

Section 6 amends section 44-5508 of the Surplus Lines Insurance Act by replacing the requirements with which a surplus lines licensee must comply before placing insurance with a nonadmitted insurer. This section requires surplus lines licensees to determine that the insurer is authorized to write such insurance in its domiciliary jurisdiction, has sufficient evidence of good business repute and financial integrity, and has minimum capital and surplus of the greater of that required in Nebraska or fifteen million dollars. If the insurer does not have the required minimum capital and surplus, this section allows placement with a finding of acceptability by the Director of Insurance if the insurer has minimum capital and surplus of more than \$4.5 million. This section prohibits placement

of coverage with an insured domiciled outside of the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

Section 7 amends section 44-5510 of the Surplus Lines Insurance Act to exempt a surplus lines licensee from performing a due diligence search on behalf of an exempt commercial purchaser to determine whether insurance is available on an admitted basis if the licensee discloses that admitted market coverage may be available and the exempt commercial purchaser requests in writing procurement from a nonadmitted insurer.

Section 8 amends section 44-5511 of the Surplus Lines Insurance Act to exempt surplus lines licensees reporting insurance placed or procured on behalf of an exempt commercial purchaser from the quarterly report of business placed by the licensee.

Section 9 amends section 44-5515 of the Surplus Lines Insurance Act to change references from “industrial insured” to “exempt commercial purchaser.”

Section 10 provides for an operative date of July 21, 2011.

Section 11 provides for the repealers of the amendatory sections.

Section 12 provides for the emergency clause.

The bill passed 46-0-3 with emergency clause on April 20, 2011 and was signed by the Governor on April 26, 2011.

## **LB72 (Pahls) Change insurance provisions**

### **Enacted**

### **Effective August 27, 2011**

This bill, introduced at the request of the Director of Insurance, amends various sections with regard to insurance. The bill provides, section by section, as follows:

#### **PAYMENT OF LIFE INSURANCE PROCEEDS**

Section 1 amends section 44-3,143 to provide that a violation of its requirements for payment of interest on delayed life insurance proceeds shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act rather than a Class III misdemeanor pursuant to section 44-394 which provides that any violation of Chapter 44 for which no penalty is provided shall be a Class III misdemeanor (maximum: 3 months, or \$500, or both; minimum: none).

### SEPARATE ACCOUNTS

Section 2 amends section 44-402.01 to specify that creation of separate accounts by a domestic life insurance company is subject to prior approval by the Director of Insurance rather than only prior notice to the director.

### INSURANCE POLICY COMPLIANCE WITH FEDERAL LAW

Section 3 amends section 44-710.03 to require policies of sickness and accident insurance to include a mandatory provision stating that any policy provision which, on its effective date, is in conflict with federal or state law is hereby amended to conform to the minimum requirements of such law.

Section 4 amends section 44-710.04 to repeal provisions which allow policies of sickness and accident insurance to include a permissive provision stating that any policy provision which, on its effective date, is in conflict with state statutes is hereby amended to conform to the minimum requirements of such statutes.

### PAYMENT OF LIFE INSURANCE PROCEEDS

Section 5 amends section 44-1540 of the Unfair Insurance Claims Settlement Practices Act to provide that a violation of section 44-3,143 (section 1 of the bill) is a violation of the Unfair Insurance Claims Settlement Practices Act.

### INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section 6 amends section 44-4803 of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to define “netting agreement” as an agreement that provides for the netting of qualified financial contracts, and to define “qualified financial contract” as a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement so determined by the director.

Section 7 amends the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to enact a new section to specify that a person shall not be prohibited by a stay under the act from exercising specified contracts under circumstances specified in the section. This section specifies that the net or settlement amount, owed by a non-defaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, and requires the receiver to use best efforts to notify parties to the contract. This section prohibits the receiver from voiding such a transaction that commenced before a delinquency proceeding in the absence of intent to commit fraud. This section defines “contractual right” for the purpose of the section. This section specifies that all rights of a counterparty under the act apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts.

Section 8 amends section 44-4862 of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to provide that new section 7 shall be assigned within the act.

### MISCELLANEOUS PROVISIONS

Section 9 provides for the repealers of the amendatory sections.

The bill passed 49-0-0 on February 16, 2011 and was signed by the Governor on February 22, 2011.

## **LB73e (Pahls) Change the Comprehensive Health Insurance Pool Act**

### **Enacted**

**Effective May 18, 2011**

#### OVERVIEW

This bill, introduced at the request of the Director of Insurance, amends various sections of the Comprehensive Health Insurance Pool (CHIP) Act to do the following: (1) The bill provides that CHIP shall be administered by “a pool administrator” rather than “an administering insurer” and further provides that, in addition to an insurer, the pool administrator, as selected by the CHIP board of directors, may be a third-party administrator authorized to transact business in this state. (2) The bill repeals obsolete provisions and harmonizes an internal reference.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 44-4217 of the Comprehensive Health Insurance Pool Act to allow the CHIP board of directors to select a pool administrator, rather than an administering insurer, to administer the pool. This section also repeals obsolete provisions.

Section 2 amends section 44-4219 of the Comprehensive Health Insurance Pool Act to provide that the CHIP board of directors shall select a pool administrator, rather than an administering insurer, to administer the pool.

Section 3 amends section 44-4222.02 of the Comprehensive Health Insurance Pool Act to change occurrences of “administering insurer” to “pool administrator.”

Section 4 amends section 44-4223 of the Comprehensive Health Insurance Pool Act to provide that the CHIP board of directors shall select a pool administrator, rather than an administering insurer, to administer the pool. This section allows the board of directors to select an insurer or a third-party administrator authorized to transact business in this state to act as pool administrator and adds the ability to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services as a criterion for selection as pool administrator.

Section 5 amends section 44-4224 of the Comprehensive Health Insurance Pool Act to change an occurrence of “administering insurer” to “pool administrator.”

Section 6 amends section 44-4225 of the Comprehensive Health Insurance Pool Act to repeal obsolete provisions.

Section 7 amends section 77-918 to repeal obsolete provisions and harmonize an internal reference.

Section 8 provides for the repealers of the amendatory sections.

Section 9 provides for the emergency clause.

The bill passed 44-0-5 with the emergency clause on May 11, 2011 and was signed by the Governor on May 17, 2011.

**LB132 (Dubas, Coash, Harms, Karpisek, Mello, Nordquist, Pirsch, Schilz, Sullivan, Utter) Adopt the Abortion Mandate Opt-Out Act so no abortion coverage is provided by a qualified health plan offered through a health insurance exchange created pursuant to federal law**

**Pending in Committee**

This bill would enact three new sections to be known as the Abortion Mandate Opt-Out Act with the purpose of affirmatively opting out of allowing qualified health plans that cover abortion to participate in health insurance exchanges within Nebraska.

The bill would provide that no abortion coverage shall be provided by a qualified health plan offered through a health insurance exchange created in this state pursuant to the federal Patient Protection and Affordable Care Act and would further provide that this limitation shall not apply to an abortion performed when the life of the mother is endangered, including a condition caused by or arising from the pregnancy.

**LB196 (Lathrop) Change liability insurance and financial responsibility requirements for motor vehicles**

**Pending in Committee**

This bill would increase the current required minimum limits of motor vehicle liability insurance coverage (1) for bodily injury to or death of other persons and (2) for damage to property of others.

Sections 1 to 6 would amend the following sections to increase the minimum liability limits (1) from \$25,000 to \$50,000 for injury to or death of one person in one accident, (2) from \$50,000 to \$100,000 for injury to or death of two or more persons in one accident, and (3) from \$25,000 to \$50,000 for injury to or destruction of property of others in one accident:

Section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act (requirements of coverage) (note: property damage limits have no application in the case of uninsured and underinsured coverages, which are for bodily injury and death only) (section 1 of the bill);

Section 60-310 of the Motor Vehicle Registration Act (definition of “automobile liability policy” for purposes of motor vehicle registration requirements) (section 2 of the bill);

Section 60-346 of the Motor Vehicle Registration Act (definition of “proof of financial responsibility” for purposes of motor vehicle registration requirements) (section 3 of the bill);

Section 60-501 of the Motor Vehicle Safety Responsibility Act (definition of “proof of financial responsibility”) (section 4 of the bill);

Section 60-509 of the Motor Vehicle Safety Responsibility Act (requirements for an automobile liability policy or bond) (section 5 of the bill); and

Section 60-534 of the Motor Vehicle Safety Responsibility Act (requirements for a certified SR22 motor vehicle liability policy) (section 6 of the bill).

Section 7 would amend section 60-549 of the Motor Vehicle Safety Responsibility Act to increase the minimum amount of cash or securities deposited with the state Treasurer necessary to evidence proof of financial responsibility from \$75,000 to \$150,000 – historically this amount has been the sum of the minimum limit for bodily injury to or death of two or more persons plus the minimum limit for injury to or destruction of property of others. This section would express this amount with an internal reference to subdivisions (11)(b) and (c) of section 60-501.

Section 8 would provide for an operative date of January 1, 2012.

Section 9 would provide for the repealers of the amendatory sections.

Financial responsibility limits were first enacted in 1949 and have been increased three times thereafter, as follows:

1949	LB493	\$5,000/\$10,000/\$1,000
1959	LB628	\$10,000/\$20,000/\$5,000
1973	LB365	\$15,000/\$30,000/\$10,000
1983	LB253	\$25,000/\$50,000/\$25,000 (current)

## **LB223 (Karpisek) Require insurance coverage of cochlear implants**

### **Pending in Committee**

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for single or bilateral cochlear implants for persons diagnosed with severe to profound hearing impairment.

## **LB240 (Nordquist, Campbell, Cook, Hadley, Mello) Create the Nebraska Insurance Choices Exchange Task Force**

### **Pending in Committee**

This bill would create the Nebraska Insurance Choices Exchange Task Force to develop recommendations regarding the establishment, governance, and requirements of the health insurance exchange required by the federal Patient Protection and Affordable Care Act, as amended.

The task force would have nine members: the Director of Insurance or designee; the chief executive officer of the Department of Health and Human Services or designee; the Chief Information Officer or designee; three members of the Legislature, appointed by the Executive Board; and three public members, one from each congressional district, appointed by the Governor. Members would serve without expense reimbursement.

Administrative and staff support would be provided by the staff of the members of the Legislature appointed to the task force.

The task force would be considered a stakeholder for any activities conducted by the Department of Insurance under the department's Affordable Care Act Exchange Investigation Study. The task force would review interim and final reports and recommendations resulting from the department's study.

The task force would submit a report to the Legislature by December 1, 2011, with recommendations regarding the implementation of the health insurance exchange.

The task force would oversee implementation of the health insurance exchange in Nebraska until June 30, 2012.

These provisions would sunset on June 30, 2012.

The bill carries the emergency clause.

NOTE: LR85 (Pahls, Christensen, Gloor, Langemeier, Pankonin, Pirsch, Utter) calls on the Banking, Commerce and Insurance Committee to study how the insurance laws of this state should be amended to respond to the provisions of the federal Patient Protection and Affordable Care Act, as amended, regarding establishment of health insurance exchanges by the states.

**LB280 (Lathrop) Adopt the Discretionary Clause Prohibition Act and create an unfair insurance trade practice**

**Pending in Committee**

This bill would enact five new sections to be known as the Discretionary Clause Prohibition Act, which would provide that no health policy, contract, certificate, or agreement and no disability income protection policy, contract, certificate, or agreement shall contain a provision purporting to reserve discretion to the carrier or insurer to interpret the terms of the contract or to determine eligibility to receive benefits.

The bill would provide that a violation shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

**LB322 (Cornett) Provide requirements for prescription drug insurance**

**Pending in Committee**

This bill would enact a new section to provide requirements for health insurers providing prescription drug coverage.

The bill would provide that an insurer shall not create specialty tiers that require payment of a percentage cost of prescription drugs and shall not establish tiers of prescription drug copays in which the maximum prescription drug copay exceeds by more than five hundred percent the lowest prescription drug copay charged under the health benefit plan.

The bill would provide that if an insurer's health benefit plan provides a limit for out-of-pocket expenses for benefits other than prescription drugs, the insurer shall include one of the following provisions in the plan that would result in the lowest out-of-pocket prescription drug cost: (1) out-of-pocket expenses for prescription drugs shall be included under the plan's total limit for out-of-pocket expenses for all benefits provided under the plan; or (2) out-of-pocket expenses for prescription drugs per contract year shall not exceed one thousand dollars per insured or two thousand dollars per insured family, adjusted for inflation.

The bill would provide that it shall be enforced by the Department of Insurance. The bill would provide that the department shall cease enforcement of it if its requirements will

result in the assumption by the state of additional costs pursuant to the federal Patient Protection and Affordable Care Act, as amended.

**LB371 (Schumacher, McCoy) Provide for an unfair insurance trade practice relating to public officials**

**Pending in Committee**

This bill would amend section 44-1525 of the Unfair Insurance Trade Practices Act to provide that it shall be an unfair trade practice in the business of insurance for an insurer to refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the status of the individual as a public official.

**LB409 (Utter) Provide for the retention of insurance proceeds by a county or municipality to repair or demolish damaged property**

**Pending on General File**

This bill would provide for the withholding and deposit of insurance proceeds into a trust or escrow account maintained by a county, city, or village for the repair or demolition of materially damaged real property.

The bill would provide that if insured real property is materially damaged by flood, fire, explosion, or otherwise, and a claim is made by the insured to the insurer, the insurer shall withhold from payment of the claim the greater of: twenty-five percent of the actual cash value of the property; twenty-five percent of the final settlement; or fifteen thousand dollars.

Upon the withholding of the funds, the insurer shall give notice to: the insured; the treasurer of the county, city, or village; any mortgagee named on the policy; and the court in which a proceeding involving the property is filed.

The county, city, or village may request that the withheld funds be remitted to a trust or escrow account maintained by the treasurer of the county, city, or village. A copy of the request shall be sent to the insured who may object to the county, city, or village. The governing body of the county, city, or village shall make the final determination. After receipt of the request, the insurer shall remit the withheld funds to the treasurer.

The funds deposited in the trust or escrow account shall be used for the repair or demolition and clearing of the damaged real property. If the repair or demolition and clearing is performed by the insured or a contractor of the insured, the insured shall receive the proper permit issued by the county, city, or village. The county, city, or village shall not make payment until it has inspected and approved the performance. Any funds remaining upon completion shall be paid to the insured.

## EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments (AM577) would strike the original provisions of the bill and would insert a new section with the following subsections:

1. Subsection (1) would provide that after an insurer makes payment to all mortgagees on a fire and casualty insurance policy covering damaged real property, the insurer shall reserve ten thousand dollars or ten percent of the coverage limit, whichever is greater, to be held as a demolition cost reserve if (a) the property is located within the limits and any zoning jurisdiction of a city or village, (b) the property is uninhabitable or unfit for use, and (c) proof of loss has been submitted by the policyholder to the insurer for a sum in excess of seventy-five percent of the face value of the policy.
2. Subsection (2) would provide that if the insurer receives proof of loss, it shall notify the clerk of the city or village of the existence of the demolition cost reserve.
3. Subsection (3) would provide that the city or village shall release all interest in the demolition cost reserve within ninety days of notice unless the city or village has instituted legal proceedings or issued a demolition order.
4. Subsection (4) would provide that a demolition cost reserve shall not be required if (a) the insurer has received notice from the insured and the city or village that the property has been replaced or rebuilt, repairs have been completed, or demolition has been completed, or (b) the city or village has failed to notify the insurer that it has instituted legal proceedings or issued a demolition order.
5. Subsection (5) would provide that the city or village shall present to the insurer a report of demolition costs.
6. Subsection (6) would provide that the insurer is not liable for any demolition costs (a) not covered under the policy, (b) in excess of policy liability limits, or (c) to the extent the reserve is needed to pay any interest of a mortgagee on the policy.
7. Subsection (7) would provide that an insurer and its agent that complies with this section shall be immune from any civil liability.

### **LB422 (Nordquist) Change eligibility provisions under the Comprehensive Health Insurance Pool Act**

#### **Pending in Committee**

This bill would amend sections 44-4221 and 44-4228 of the Comprehensive Health Insurance Pool Act to expand eligibility for pool coverage to an otherwise ineligible individual who was offered coverage under a short-term health insurance policy which such individual both elected and exhausted. These changes would be applicable to non-

HIPAA-eligible individuals (subdivision (1)(a) of section 44-4221) and HIPAA-eligible individuals (subdivision (1)(b) of section 44-4221).

### **LB478 (McCoy) Adopt the Nebraska Insurance Claims Fraud Prevention Act**

#### **Pending in Committee**

This bill would enact the Nebraska Insurance Claims Fraud Prevention Act and would provide for three different violations:

(1) It would be unlawful for a health care practitioner or intermediary to solicit a client, patient, or customer for financial benefit within thirty days after a motor vehicle accident involving the client, patient, or customer with the intent to seek insurance benefits or to assert a claim against the client, patient, or customer, any other insured involved in the accident, or a governmental entity or an insurer on behalf of the client, patient, or customer.

(2) It would be unlawful for a health care practitioner to compensate a person to obtain a recommendation from such person or to secure his or her employment by a client, patient, or customer if the practitioner's intent is to seek insurance benefits or to assert a claim against the client, patient, or customer or a governmental entity or an insurer on behalf of the client, patient, or customer.

(3) It would be unlawful for any person as an individual, as a public or private employee, or as an agent for any association, partnership, firm, or corporation to act as a capper, runner, or steerer. The bill would define a "capper, runner, or steerer" as a person who receives a financial benefit from a health care practitioner for procuring or attempting to procure a client, patient, or customer at the direction of a health care practitioner in violation of the act.

The bill would provide that violations would be subject to a fine not to exceed one thousand dollars collected by the Department of Insurance.

### **LB493 (Pahls) Provide dependent health insurance up to age twenty-six**

#### **Pending in Committee**

This bill would enact six new sections that would provide, in terms based on the federal Patient Protection and Affordable Care Act, as amended, that a health carrier that makes available dependent coverage of children shall make that coverage available for children until the attainment of twenty-six years of age. The provisions of the bill are based on provisions of a model act developed by the National Association of Insurance Commissioners.

The bill would also outright repeal section 44-7,103 (enacted as LB551 in 2009), which requires continuing coverage under a health benefit plan for dependent children to age thirty.

NOTE: LR138 (Nordquist, Campbell, Conrad, Cook, Council, Gloor, Howard, McGill, Mello) calls on the Banking, Commerce and Insurance Committee to study the exit of insurers from the health insurance marketplace for stand-alone health insurance policies for children.

**LB514 (Christensen) Provide for recovery for unreasonable delay or denial of an insurance claim**

**Pending in Committee**

This bill would amend section 44-359 to provide that when a plaintiff, in an action against a property casualty insurance company, obtains a judgment for damages and an allowance of attorney's fees, the court may, if the recovery had been unreasonably delayed or denied by the company, allow an additional recovery of up to one times the recovery and attorney's fees as liquidated damages.

**LB535 (Utter) Adopt the Portable Electronics Insurance Act and redefine service contract**

**Enacted**

**Operative January 1, 2012**

**Speaker Priority Bill**

**OVERVIEW**

This bill enacts the Portable Electronics Insurance Act to provide for issuance by the Director of Insurance of a limited lines insurance license that allows employees or authorized representatives of a vendor to offer or sell coverage under a policy of portable electronics insurance to customers at each location at which the vendor engages in portable electronics transactions. The bill provides that such employees and authorized representatives of the vendor shall not be subject to licensure as insurance producers.

**SUMMARY**

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act for sections 1 to 9 of the bill: the Portable Electronics Insurance Act.

Section 2 enacts a new section to provide for definitions: (1) “customer;” (2) “covered customer;” (3) “director;” (4) “location;” (5) “portable electronics;” (6) “portable electronics insurance” (insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction); (7) “portable electronics transaction;” (8) “supervising entity;” (a business entity that is a licensed insurance producer); and (9) “vendor” (a person in the business of engaging in portable electronics transactions).

Section 3 enacts a new section to provide that a vendor shall hold a limited lines insurance license issued by the Director of Insurance to sell or offer coverage under a policy of portable electronics insurance. This section provides that the license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

Section 4 enacts a new section to provide that an application for a limited lines insurance license shall be made to and filed with the Director of Insurance. This section provides that a license shall be valid for one year and that an initial license fee shall not exceed one hundred dollars and a renewal fee shall not exceed one hundred dollars.

Section 5 enacts a new section to provide for required customer disclosures in brochures and written materials, and further provides that portable electronics insurance may be offered on a periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers.

Section 6 enacts a new section to provide that an employee or authorized representative of a vendor may sell or offer for sale portable electronics insurance to customers and shall not be subject to licensure as an insurance producer if the vendor obtains a limited lines insurance license and the insurer issuing the portable electronics insurance supervises or appoints a supervising entity to supervise the administration of the insurance program. This section provides that no vendor shall require the purchase of portable electronics insurance as a condition of the purchase or lease of portable electronics or services. This section provides that portable electronics insurance is primary over any other insurance coverage applicable to the portable electronics.

Section 7 enacts a new section to provide for administrative sanctions which the Director of Insurance may impose for violations of the act.

Section 8 enacts a new section to provide requirements for a termination or change in the terms and conditions of a policy of portable electronics insurance by an insurer or a termination of a portable electronics insurance policy by a vendor.

Section 9 enacts a new section to provide that records pertaining to transactions under the act shall be maintained for three years and shall be kept available and open to inspection by the Director of Insurance.

Section 10 amends section 44-102.01 to expand the definition of “service contract” to include a contract or agreement which covers “failure, malfunction,” or “inoperability” as well as wear and tear, inherent defect, or failure of an inspection to detect the likelihood of failure of a product. This section otherwise currently provides that insurance does not include a service contract.

Section 11 provides for an operative date of January 1, 2012.

Section 12 provides for the repealer of the amendatory section.

The bill passed 48-0-1 on May 5, 2011 and was signed by the Governor on May 11, 2011.

**LB678 (Lathrop) Prohibit insurance discrimination based on race, creed, national origin, or religion**

**Pending in Committee**

This bill would amend section 44-1525 of the Unfair Insurance Trade Practices Act to provide that it shall be an unfair trade practice in the business of insurance for an insurer to engage in any act or practice in connection with the issuance, underwriting, rating, renewal, cancellation, or denial of or any other action related to a property and casualty insurance policy in a manner that has the effect of discrimination against any consumer because of his or her race, creed, national origin, or religion.

## INTEREST, LOANS, AND DEBT

### **LB75e (Pahls) Change provisions relating to loan brokers, mortgage loan originators, and residential mortgage licensing**

#### **Enacted**

#### **Effective February 23, 2011**

This bill, introduced at the request of the Director of Banking and Finance, amends sections regarding mortgage loan originators and loan brokers. The bill provides, section by section, as follows:

Section 1 amends section 8-702 of the state-federal cooperation acts to extend the deadline for registration of mortgage loan originators employed by banking institutions from “sixty” days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations to “one hundred eighty” days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations.

Section 2 amends section 45-189 of the loan broker statutes to correct an occurrence of “advanced fee” to “advance fee.” (“Advance fee” is a defined term in section 45-190.)

Section 3 amends section 45-190 of the loan broker statutes to amend the definition of “loan broker” to provide that a loan broker is a person who, for or in expectation of “consideration” rather than “an advance fee” from a borrower, procures or attempts to procure a loan for the borrower or assists the borrower in making an application for a loan.

Section 4 amends section 45-742 of the Residential Mortgage Licensing Act to clarify that the Department of Banking and Finance may issue a notice of expiration of a mortgage loan originator license if the licensee does not submit a request to renew the license, in lieu of commencing license revocation procedures.

Sections 5 provides for the repealers of the amendatory sections.

Section 6 provides for the emergency clause.

The bill passed 49-0-0 with the emergency clause on February 16, 2011 and was signed by the Governor on February 22, 2011.

**LB77e (Pahls) Change debt cancellation contract and debt suspension contract provisions**

**Enacted**

**Effective March 11, 2011**

This bill amends provisions of statute regarding installment sales and installment loans.

Sections 1 and 2 amend sections 45-335 and 45-336 of the Nebraska Installment Sales Act to:

(1) provide that debt cancellation contracts and debt suspension contracts are included in the definition of “basic time price” and therefore may be financed;

(2) provide that electronic title and lien services are included in the definition of “basic time price” and in the description of the installment sales contract and therefore may be financed; and

(3) provide that installment sales licensees, as well as financial institutions, may enter into debt cancellation contracts and debt suspension contracts.

Sections 3 and 4 amend sections 45-1002 and 45-1024 of the Nebraska Installment Loan Act to:

(1) provide that installment loan licensees, as well as financial institutions, may enter into debt cancellation contracts and debt suspension contracts; and

(2) provide that fees and expenses charged for electronic title and lien services may be included in the principal balance of the loan.

Section 5 provides for the repealers of the amendatory sections.

Section 6 provides for the emergency clause.

The bill passed 45-0-4 with the emergency clause on March 4, 2011 and was signed by the Governor on March 10, 2011.

**LB269 (Conrad) Change provisions relating to delayed deposit services**

**Pending in Committee**

This bill would amend sections 45-901, 45-910, and 45-927 of the Delayed Deposit Services Licensing Act and would enact a new section in the act to provide that the annual \$150 main office renewal fee and the annual \$100 branch office renewal fee shall

both be raised to \$500, and that renewal fees shall be credited to the Financial Literacy Fund created by this bill, to be administered by the Director of Banking and Finance and used to provide assistance to nonprofit entities that promote opportunities which offer financial literacy programs to students in grades kindergarten through twelve.

## **LB553 (McGill) Change provisions relating to delayed deposit services**

### **Pending in Committee**

#### OVERVIEW

This bill would amend section 45-901, 45-906, 45-915, 45-919, 45-921, 45-925, and 45-927 of the Delayed Deposit Services Licensing Act and would enact four new sections within the act to provide that a licensee shall not enter into another delayed deposit transaction with a maker (customer) if such maker has a delayed deposit transaction in an aggregate face amount of five hundred dollars that is not complete with the licensee or any other licensee. The bill would require that the Director of Banking and Finance shall enter into a contract with a third-party data base provider to develop, implement, and maintain a data base accessible to licensees to facilitate compliance with the act. The bill would require the cost of the data base to be paid for with fees paid by the licensees.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide that new sections 7 to 10 of the bill shall be assigned within the act.

Section 2 would amend section 45-906 of the Delayed Deposit Services Licensing Act to provide that an application for a delayed deposit services license shall be accompanied by a data base fee of one hundred dollars to defray the costs of establishing the data base and that the fee shall terminate on the date the Director of Banking and Finance implements the data base.

Section 3 would amend section 45-915 of the Delayed Deposit Services Licensing Act to provide that a data base fee of one hundred dollars shall be paid to the Director of banking and Finance for each request by a licensee to change the location of its designated principal place of business or to establish or change the location of a branch office, that the fee shall be used to defray the costs entering into the third-party data base contract, and that the fee shall terminate on the date the director implements the data base.

Section 4 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall enter into another delayed deposit transaction with a maker (customer) if such maker has a delayed deposit transaction in an aggregate face amount of five hundred dollars that is not complete with the licensee or any other licensee. The

bill would also amend this section to expand the definition of “completion of a delayed deposit transaction” to mean (1) the licensee has presented the maker’s check for payment to a financial institution and has received payment for the check, (2) the licensee has written the maker’s check off as a bad debt after it was returned unpaid by the financial institution, or (3) the licensee has sold the check to a third party after it was returned unpaid by the financial institution.

Section 5 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of fines.

Section 6 would amend section 45-925 of the Delayed Deposit Services Licensing Act to update an internal reference and repeal provisions made obsolete by amendments proposed in section 4 of the bill.

Section 7 would enact a new section within the Delayed Deposit Services Licensing Act to provide that on or before January 1, 2014, the Director of Banking and Finance shall enter into a contract with a third-party data base provider, to develop, implement, and maintain a statewide data base that, at all times, is accessible to licensees and is accessible to the director. This section would provide that the director shall select the third-party data base provider and shall retain oversight over such provider. This section would provide that the data base shall be used to facilitate compliance by licensees with section 45-919 and to create an annual report pursuant to section 9 of the bill. This section would provide that the data base shall allow a licensee accessing the data base to verify whether a maker has any delayed deposit transactions with any licensee that have not been completed. This section would provide that the third-party data base provider may charge each licensee a verification fee for access to the data base in amounts approved by the director.

Section 8 would enact a new section within the Delayed Deposit Services Licensing Act to provide that if the Director of Banking and Finance has not yet implemented a data base or the data base is not fully operational, the licensee shall verify that a maker does not have a delayed deposit transaction with the licensee that is not complete by way of a data base which the licensee shall maintain of all of its transaction at all its locations. This section would provide that if the director has implemented a data base and the data base is fully operational, the licensee shall access the data base and verify that a maker does not have any transactions in violation of section 45-919. This section would provide that if the director has not yet implemented a data base, the data base is not fully operational, or the licensee is unable to access the data base due to technical difficulties, a licensee may rely upon written verification of the maker that the maker does not have any outstanding delayed deposit transactions with any licensee. This section would provide that the third-party data base provider may impose a data base verification fee, not to exceed one dollar per transaction, for data required to be submitted by a licensee. This section would require that for the first twelve months that the data base is operational, an additional licensing fee of fifty cents per transaction shall be paid to defray the costs of establishing the data base. This section would provide that the director may assess each licensee and each branch office a data base fee not to exceed one hundred dollars to

defray the costs of establishing the data base and that the fee shall terminate on the date the director implements the data base.

Section 9 would enact a new section within the Delayed Deposit Services Licensing Act to provide that the third-party data base provider shall compile an annual report.

Section 10 would enact a new section within the Delayed Deposit Services Licensing Act to provide for limitations on liability.

Section 11 would amend section 45-927 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of cash funds and disposition of fines.

Section 12 would provide for the repealers of the amendatory sections.

## **REAL PROPERTY**

### **LB25 (Langemeier) Provide exemptions relating to real property for asset management companies**

#### **Enacted**

#### **Effective August 27, 2011**

This bill amends sections 76-2417, 76-2418, and 76-2422 and enacts two new sections within sections 76-2401 to 76-2430 to provide that a real estate licensee shall be exempt from requirements in sections 76-2417 and 76-2418 regarding presenting written offers to and from the client buyer or seller and shall be exempt from requirements in section 76-2422 regarding inclusion of specific duties and responsibilities in a written agency agreement with a seller if the client is an asset management company.

The bill defines an “asset management company” is a business entity that, through legal authorization, sells, conveys, or otherwise offers an interest in real property that belongs to a financial institution, a mortgage-holding entity chartered by Congress, or a governmental entity.

The bill amends sections 76-2402, 76-2405, 76-2407, 76-2416, 76-2421, 76-2423, 76-2425, 76-2427, 76-2429, 76-2430, 81-885.17, and 81-885.24 to harmonize internal references.

The bill passed 45-0-4 on March 4, 2011 and was signed by the Governor on March 10, 2011.

### **LB43 (McCoy) Change provisions relating to trust deeds**

#### **Enacted**

#### **Effective August 27, 2011**

This bill amends section 76-1002 of the Nebraska Trust Deeds Act to correct an internal reference to provisions regarding transfers in trust of real property made to secure future advances made at the option of the parties.

The bill passed 45-0-4 on March 4, 2011 and was signed by the Governor on March 10, 2011.

## **LB44 (McCoy) Change provisions relating to power of sale conferred upon a trustee**

### **Pending in Committee**

This bill would amend section 76-1005 of the Nebraska Trust Deeds Act to provide that (1) the person selling the trust property under a power of sale need not be named in the trust deed and (2) an error or omission in a trust deed concerning the designation of the trustee authorized to exercise a power of sale does not invalidate the trust deed or the ability of the beneficiary of the trust deed to appoint a successor trustee to exercise the power of sale.

The bill carries the emergency clause.

## **LB49 (Krist) Provide certain requirements relating to filing of nonconsensual liens**

### **Pending in Committee**

This bill would enact a new section to provide requirements regarding the filing of nonconsensual liens.

The bill would provide that a nonconsensual lien submitted for recordation at the county recording office shall be accompanied by an envelope with the name and address of the owner of the real property on the envelope, along with the proper postage affixed. Upon recording of the nonconsensual lien, the county recording office shall, using the accompanying envelope, forward a copy of the recorded lien to the owner as addressed on the envelope. If the envelope is not submitted or if it does not have the name and address of the owner on it or the proper postage affixed, the county recording office shall reject the lien.

The bill would provide that it does not apply to mortgages, deeds of trust, or encumbrances in which the parties have or should have knowledge.

## **LB410 (Utter) Adopt the Nebraska Appraisal Management Company Registration Act**

### **Enacted**

### **Operative January 1, 2012**

This bill enacts twenty new sections to be known as the Nebraska Appraisal Management Company Registration Act. The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Nebraska Appraisal Management Company Registration Act.

Section 2 enacts a new section to provide for definitions. An “appraisal management company” is defined as an external third party that, in connection with valuing real property collateralizing mortgage loans, mortgages, or trust deeds, oversees a network or panel of certified or licensed appraisers, and that is authorized, either by a creditor or by an underwriter of or other principal in the secondary mortgage markets: to recruit, select, and retain appraisers; to contract with certified or licensed appraisers to perform real property appraisal activity; to manage the process of having an appraisal performed; or to review and verify the work of appraisers.

Section 3 enacts a new section to provide that it is unlawful to engage in business as an appraisal management company without first obtaining a registration issued by the Real Property Appraiser Board. This section provides requirements for an application for registration and provides that a registration shall be valid for two years.

Section 4 enacts a new section to provide that the Nebraska Appraisal Management Company Registration Act does not apply to: (1) a person that exclusively employs persons for the performance of appraisal services; (2) an appraisal management company owned and controlled by a federally regulated financial institution; (3) an appraiser that enters into an agreement with an appraiser for the performance of appraisal services if upon completion of the appraisal services the appraisal report is signed by both the appraiser who completed the appraisal services and the appraiser who requested the appraisal services; or (4) a relocation management company.

Section 5 enacts a new section to provide requirements for service of process on non-domiciliary appraisal management companies.

Section 6 enacts a new section to provide for the Real Property Appraiser Board to charge and collect fees specified in this section for its services under the Nebraska Appraisal Management Company Registration Act.

Section 7 enacts a new section to provide restrictions on who may own an appraisal management company.

Section 8 enacts a new section to provide restrictions on who may perform appraisal services for an appraisal management company.

Section 9 enacts a new section to provide that an appraisal management company shall have a system in place to verify that an appraiser being added to the appraiser panel holds the appropriate license or certification in good standing.

Section 10 enacts a new section to provide that an employee of or independent contractor to an appraisal management company that performs a Uniform Standards of Professional Appraisal Practice standard 3 appraisal review shall be an appraiser with the proper level of licensure.

Section 11 enacts a new section to provide that an appraisal management company shall have a system in place to verify that an appraiser on the appraiser panel has not had a license or certification refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state in the previous twenty-four months.

Section 12 enacts a new section to provide requirements for an appraisal management company to maintain detailed records.

Section 13 enacts a new section to provide that an appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent.

Section 14 enacts a new section to provide requirements for the Real Property Appraiser Board to maintain a list of registered appraisal management companies.

Section 15 enacts a new section to provide that an appraisal management company shall make payment of fees to an appraiser for the completion of an appraisal or valuation assignment within sixty days after the date on which the appraiser transmits or provides the completed appraisal report or valuation assignment to the appraisal management company. This section provides for complaint procedures with the Real Property Appraiser Board for an appraiser if the appraisal management company removes the appraiser from the appraiser panel of the appraisal management company.

Section 16 enacts a new section to provide that the Real Property Appraiser Board may censure an appraisal management company, suspend or revoke the registration issued to an appraisal management company, or levy fines or impose civil penalties on an appraisal management company for violations of the act.

Section 17 enacts a new section to provide requirements for disciplinary hearings by the Real Property Appraiser Act.

Section 18 enacts a new section to provide the Real Property Appraiser Board with rule and regulation authority to carry out the act.

Section 19 enacts a new section to provide for disposition of fees and other revenue.

Section 20 enacts a new section to provide that an appraisal management company with a reasonable basis to believe that an appraiser has failed to comply with applicable laws or the Uniform Standards of Professional Appraisal Practice shall refer the matter to the Real Property Appraiser Board.

Section 21 amends section 76-2223 of the Real Property Appraiser Act to provide that the Real Property Appraiser Board shall administer and enforce the Nebraska Appraisal Management Company Registration Act.

Section 22 provides for an operative date of January 1, 2012.

Section 23 provides for the repealer of the amendatory section.

The bill passed 45-0-4 on March 4, 2011 and was signed by the Governor on March 10, 2011.

### **LB410A (Utter) Appropriation Bill**

#### **Enacted**

#### **Effective August 27, 2011**

This bill appropriates \$36,450 for FY2011-12 and \$31,700 for FY2012-13 from the Appraisal Management Company Fund to the Real Property Appraiser Board to carry out LB410.

The bill passed 43-0-6 on March 4, 2011 and was signed by the Governor on March 10, 2011.

### **LB571 (Price) Change provisions relating to homeowners' association and condominium association liens**

#### **Pending in Committee**

This bill would amend section 52-2001 regarding homeowners' association liens and section 76-874 of the Nebraska Condominium Act to provide for additional requirements and procedures regarding (1) a homeowners' association's statutory lien on a member's real estate for any assessment attributable to real estate or fines imposed against its owner or (2) a unit owners association's statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. The bill would specify that attorney's fees and costs and other sums due to the association under the declaration or agreement, the sections amended by this bill, or as a result of an administrative, arbitration, mediation, or judicial decision, as well as other fees, charges, late charges, fines, and interest, are enforceable in the same manner as unpaid assessments. The bill would provide that a lien would be prior to first security interests recorded before the date on which the assessment sought to be enforced became delinquent to the extent of both the common expense assessment and reasonable attorney's fees and costs incurred by the association in enforcing the association's lien. The bill would provide that in an action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and owing before commencement or during pendency of the action. The bill would reorganize various existing provisions in these sections.

The bill carries the emergency clause.

**LB613 (Pirsch) Change certain lien provisions relating to homeowners' associations and condominiums**

**Pending in Committee**

This bill would amend section 52-2001 regarding homeowners' association liens for assessments and fines and section 76-874 of the Nebraska Condominium Act regarding unit owners association liens for assessments and fines.

The bill would repeal provisions which provide for an association to have a lien on a member's real estate or on an owner's unit for fines imposed against the member or owner.

The bill would provide that a lien is prior to all other liens and encumbrances on real estate or on a unit except, among other things, a mortgage, rather than a "first" mortgage, or a deed of trust recorded before the required notice has been recorded for a delinquent assessment for which enforcement is sought, rather than the date on which the assessment sought to be enforced became delinquent.

The bill would amend section 52-2001 to provide that the definition of "homeowners' association" does not include a "co-owners association organized under the Condominium Property Act" (the 1963 condominium act) as well as does not include a unit owners association organized under the Nebraska Condominium Act (the 1983 condominium act).

**LB614 (Pirsch) Change provisions relating to homeowners' association and condominium association liens**

**Pending in Committee**

**OVERVIEW**

This bill would outright repeal section 52-2001 regarding homeowners' association liens and enact twelve new sections to be known as the Homeowners' Association Lien Act and would repeal the provisions of section 76-874 of the Nebraska Condominium Act and replace them with provisions which parallel the provisions of the proposed Homeowners' Association Lien Act in sections 1 to 12 of the bill along with terminology adjustments.

The bill would provide that the Homeowners' Association Lien Act creates and provides for the attachment and enforceability of liens against real estate in favor of a homeowners' association for homeowners' association assessments as assessed against an owner's property and not timely paid by the owner.

**SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Homeowners' Association Lien Act.

Section 2 would enact a new section to provide that except as provided in the act, no nonconsensual lien arises against real estate by reason of an owner's failure to pay assessments assessed by a homeowners' association.

Section 3 would enact a new section to provide definitions: (1) "assessment;" (2) "declaration;" (3) "homeowners' association;" (4) "notice of assessment;" (5) "notice of lien liability;" (6) "owner;" (7) "recording;" and (8) "restricted real estate."

Section 4 would enact a new section to provide that a homeowners' association shall have a lien on restricted real estate for an assessment when: the association has delivered a notice of assessment to the owner; the owner has failed to pay the association; and a notice of lien liability is recorded. This section would provide that a homeowners' association shall not file a notice of lien liability for any assessment unless the notice of lien liability is recorded within two years following the date of delivery of the notice of assessment to the owner.

Section 5 would enact a new section to provide for priority of a homeowners' association lien.

Section 6 would enact a new section to provide that a lien for unpaid assessments is extinguished unless judicial proceedings to enforce the lien are instituted within two years after the date the notice of lien liability is recorded.

Sections 7 to 9 would enact new sections to provide for release and discharge of homeowners' association liens.

Section 10 would enact a new section to provide that the rules applicable to a civil action apply to proceedings to foreclose homeowners' association liens under the act.

Section 11 would enact a new section to provide that a court may order relief and award damages if a homeowners' association acts in bad faith.

Section 12 would enact a new section to provide that, upon written request, a homeowners' association shall furnish to a person with an interest in restricted real estate a recordable statement certifying the amount of any unpaid assessments against the restricted real estate.

Section 13 would amend section 76-874 of the Nebraska Condominium Act by repealing all of its provisions and replacing them with eleven subsections which parallel the homeowners' association provisions in sections 2 to 12 of the bill along with appropriate terminology adjustments.

Section 14 would provide for the repealer of the amendatory section.

Section 15 would provide for the outright repeal of section 52-2001 regarding homeowners' association liens.

Section 16 would provide for the emergency clause.

## **PUBLIC FUNDS DEPOSIT**

### **LB78e (Pahls) Define a term in the Public Funds Deposit Security Act**

**Enacted**

**Effective March 11, 2011**

This bill amends sections 77-2387 and 77-2398 of the Public Funds Deposit Security Act to provide a new defined term, “political subdivision,” for purposes of the act.

The bill passed 45-0-4 with the emergency clause on March 4, 2011 and was signed by the Governor on March 10, 2011.

### **LB396 (Pahls) Change bond provisions relating to the deposit and investment of certain county funds**

**Enacted**

**Effective August 27, 2011**

This bill amends section 77-2318 to provide that bonds required of a depository financial institution for amounts of county funds the county treasurer has on deposit with the depository financial institution in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be deposited with the county “treasurer” rather than the county “clerk.”

The bill passed 46-0-3 on March 4, 2011 and was signed by the Governor on March 10, 2011.

## REAL ESTATE

### **LB23 (Langemeier) Change renewal and fee provisions of the Nebraska Real Estate License Act**

**Enacted**

**Effective August 27, 2011**

This bill amends the Nebraska Real Estate License Act with regard to brokers and salespersons licenses.

The bill amends section 81-885.14 of the Nebraska Real Estate License Act (1) to repeal provisions which provided that a person who is granted a non-resident license without being required to take an examination is not required to pay examination and application fees and (2) to provide that licenses shall be renewed for a two-year period rather than a one-year period.

The bill amends sections 81-885.19 and 81-885.20 of the Nebraska Real Estate License Act to repeal provisions which required the State Real Estate Commission to annually provide a pocket card to licensed brokers, associate brokers, and salespersons certifying that the person is licensed and showing on associate broker's and salesperson's cards the name and address of the employing broker.

The bill passed 49-0-0 on February 16, 2011 and was signed by the Governor on February 22, 2011.

### **LB24 (Langemeier) Provide training requirements under the Nebraska Real Estate License Act**

**Enacted**

**Effective August 27, 2011**

This bill amends sections 81-885.49 and 81-885.51 to 81-885.53 of the Nebraska Real Estate License Act to provide that every licensee shall complete, in addition to the current twelve hours of continuing education activities, six hours of training activities, in a two-year period.

The bill passed 45-0-4 on March 4, 2011 and was signed by the Governor on March 10, 2011.

## **LB26e (Langemeier) Adopt the Private Transfer Fee Obligation Act**

### **Enacted**

**Effective March 11, 2011**

#### **OVERVIEW**

This bill enacts 12 new sections and amends section 76-2,120 to provide that “a private transfer fee obligation” recorded or entered into on or after the effective date of the bill does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Private Transfer Fee Obligation Act.

Section 2 enacts a new section to provide for legislative findings and declarations.

Sections 3 to 8 enact new sections to provide for definitions: (1) “environmental covenant;” (2) “payee;” (3) “private transfer fee” – a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether it is a fixed amount or is a percentage of the property’s value, the purchase price, or other consideration given for the transfer, subject to enumerated exceptions; (4) “private transfer fee obligation” – an obligation arising under a contractual agreement or promise, whether or not recorded, that requires payment of a private transfer fee upon a subsequent transfer of an interest in the real property; and “transfer.”

Section 9 enacts a new section to provide that a private transfer fee obligation recorded or entered into on or after the effective date of this bill does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property.

Section 10 enacts a new section to provide for liability of any person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after the effective date of this bill.

Section 11 enacts a new section to provide disclosure requirements regarding a contract for the sale of real property subject to a private transfer fee obligation.

Section 12 enacts a new section to provide requirements with regard to a private transfer fee obligation in existence prior to the effective date of this bill.

Section 13 amends section 76-2,120 to provide that a seller's written disclosure statement shall include a disclosure of the existence of any private transfer fee obligation.

Section 14 provides for the repealer of the amendatory section.

Section 15 provides for the emergency clause.

The bill passed 45-0-4 with the emergency clause on March 4, 2011 and was signed by the Governor on March 10, 2011.

### **LB347 (McCoy) Authorize interest-bearing trust accounts under the Nebraska Real Estate License Act**

**Enacted**

**Effective August 27, 2011**

This bill amends sections 81-885.21 and 81-885.24 of the Nebraska Real Estate License Act regarding the required broker's non-interest-bearing earnest money trust account. The bill amends section 81-885.21 to provide that, until July 1, 2014, such trust account may be either interest bearing on non-interest bearing, and that, on and after July 1, 2014, such trust account shall be non-interest bearing. The bill amends section 81-885.24 to provide that if the trust account is interest-bearing, the interest may only be distributed to or otherwise accrue to nonprofit, tax-exempt organizations.

The bill passed 46-0-3 on March 4, 2011 and was signed by the Governor on March 10, 2011.

## ECONOMIC DEVELOPMENT

### **LB205 (Mello, Conrad, Cook, Council, Harr, Larson, McGill, Nordquist) Create the Next Generation Nebraska Commission within the Department of Economic Development**

#### **Pending in Committee**

This bill would provide for establishment of the Next Generation Commission within the Department of Economic Development.

The bill would provide that the commission shall:

- (1) advise and assist the department in activities designed to attract and retain the young adult population;
- (2) develop and make available best practices guidelines for employers to attract and retain young adult employees; and
- (3) submit a report on or before January 15, 2012, January 1, 2013, and January 1, 2015 to the Governor and the Clerk of the Legislature that includes findings and recommendations regarding (a) efforts to attract and retain the young adult population in the state, (b) career opportunities and educational needs of young adults, and (c) the movement of the young adult population between rural and urban areas and between Nebraska and other states.

The bill would provide that the commission shall have fifteen voting members appointed by the Governor and approved by the Legislature and four nonvoting, ex officio members who are members of the Legislature appointed by the Executive Board. No more than eight voting members and no more than two nonvoting members shall come from the same political party. Five voting members shall be from each congressional district. Terms shall be for two years. Voting members shall at least eighteen and less than forty years of age. Members shall serve without compensation and expense reimbursement.

The bill would provide that the commission shall meet at least four times a year. A majority of the voting members shall be necessary for the commission to take substantive action. Two-thirds of the voting members shall be required for approval of a final report.

The bill would provide for a sunset date of January 1, 2015.

## **LB345e (Conrad, Hadley, Mello) Adopt the Small Business Innovation Act**

**Enacted**

**Effective May 25, 2011**

**Senator Priority Bill (Conrad)**

### **OVERVIEW**

This bill enacts eight new sections to be known as the Small Business Innovation Act to establish a statewide pilot program to provide technical assistance for up to forty Nebraska-based growth businesses, at least one-half of which shall be in counties with a population of fewer than 50,000 inhabitants.

### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Small Business Innovation Act.

Section 2 enacts a new section to provide for a statement of legislative intent.

Section 3 enacts a new section to provide for definitions: (1) “department;” (2) “Nebraska-based growth business” (a Nebraska domestic business entity with five to 50 employees and annual sales revenue of no less than \$500,000 and no more than \$2,500,000); and (3) “small business innovation” (the provision of technical resources to locally owned and operated Nebraska-based growth businesses).

Section 4 enacts a new section to provide that the Department of Economic Development may enter into a contract with a Nebraska-based nonprofit entity, small business development center, community development corporation, Nebraska-based institution of higher education, chamber of commerce, or regional development district for the purpose of carrying out the act.

Section 5 enacts a new section to provide that a statewide pilot program is established by the bill to support and assist up to forty Nebraska-based growth businesses, at least one-half of which shall be located in counties with a population of fewer than 50,000 inhabitants.

Section 6 enacts a new section to provide legislative intent to appropriate two hundred thousand dollars from the General Fund for FY2011-12 and for FY2012-13 to carry out the Small Business Innovation Act.

Section 7 enacts a new section to provide for preparation and presentment of a report by January 1, 2013.

Section 8 enacts a new section to provide that the Small Business Innovation Act shall terminate on January 1, 2013.

Section 9 amends section 13-208 of the Community Development Assistance Act to provide that for fiscal years 2011-12 and 2012-13, the total tax credits granted for programs which may be approved and certified under the act by the Department of Economic Development (otherwise three hundred fifty thousand dollars) shall be reduced by two hundred thousand dollars.

Section 10 provides for the repealer of the amendatory section.

Section 11 provides for the emergency clause.

The bill passed 47-2-0 with the emergency clause on May 18, 2011 and was signed by the Governor on May 24, 2011.

### **LB345Ae (Conrad) Appropriation Bill**

**Enacted**

**Effective May 25, 2011**

This bill appropriates \$200,000 from the General Fund for FY2011-12 and for FY2012-13 to the Department of Economic Development to carry out LB345.

The bill passed 47-2-0 with the emergency clause on May 18, 2011 and was signed by the Governor on May 24, 2011.

### **LB387 (Hadley, Conrad, Mello; at the request of the Governor) Adopt the Business Innovation Act and eliminate economic development programs**

**Enacted**

**Operative October 1, 2011**

**Senator Priority Bill (Harr)**

This bill enacts sixteen new sections to be known as the Business Innovation Act to provide that the Department of Economic Development (DED) shall establish six programs to provide grants and financial assistance to companies receiving federal SBA grants; provide financial assistance to companies or individuals creating prototypes; establish a financial assistance program for innovation in value-added agriculture; establish a financial assistance program to identify commercial products and processes; provide financial assistance to companies using Nebraska public or private college and

university researchers and facilities for applied research projects; and provide support and funding for microlending and microenterprise entities. The bill also outright repeals the Agricultural and Value-Added Partnerships Act, the Microenterprise Development Act, and the Building Entrepreneurial Communities Act.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Business Innovation Act.

Section 2 enacts a new section to provide for definitions: (1) "department;" (2) "distressed area;" (3) "federal grant program;" (4) "microenterprise;" (5) "prototype;" and (6) "value-added agriculture."

Section 3 enacts a new section to provide for a statement of legislative purpose.

Section 4 enacts a new section to provide that in selecting projects to receive financial assistance under the act, DED shall develop a qualified action plan by January 1 of each even-numbered year.

Section 5 enacts a new section to provide that at least forty percent of the funding for financial assistance programs in sections 6 to 11 of the bill shall be used for projects that best alleviate chronic economic distress in distressed areas.

Section 6 enacts a new section to provide that DED shall establish a phase one program to provide grants to small businesses that qualify under the federal Small Business Administration's Small Business Innovation Research grant program for the purposes of planning for an application under the federal grant program. Planning grants may be made under this section to match up to sixty-five percent of the federal grant and shall not exceed five thousand dollars per project. Not more than one million dollars per year shall be awarded for grants under this section.

Section 7 enacts a new section to provide that DED shall establish a financial assistance program to provide financial assistance to businesses that employ no more than five hundred employees or to individuals for the purpose of creating a prototype of a product stemming from research and development at a business operating in Nebraska or a public or private college or university in Nebraska. Funds under this section shall be matched by nonstate funds equivalent to fifty percent of the funds requested. Funds provided shall not exceed fifty thousand dollars per project. Not more than one million dollars per year shall be awarded under this section.

Section 8 enacts a new section to provide that DED shall establish an innovation in value-added agriculture program. An entity receiving financial assistance shall provide a match of twenty-five percent for such assistance. Not more than one million dollars per year shall be awarded under this section.

Section 9 enacts a new section to provide that DED shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that employ no more than five hundred employees or to individuals that have a prototype of a product or process for the purposes of commercializing such product or process. Funds under this section shall be matched by nonstate funds equal to fifty percent of the funds requested. Not more than five hundred thousand dollars shall be provided to any one project and such financial assistance shall not exceed fifty percent of the total cost of the project. Not more than two million dollars per year shall be awarded for financial assistance under this section.

Section 10 enacts a new section to provide that DED shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that use faculty or facilities of a public or private college or university in Nebraska for applied research and development of new products or use intellectual property generated at a public or private college or university in Nebraska. Up to one hundred thousand dollars may be provided for the first phase of a project and up to four hundred thousand dollars may be provided for the second phase of the project. Funds under this section shall be matched by nonstate funds equivalent to one hundred percent of funds requested for both phases of the program. Not more than three million dollars per year for financial assistance shall be awarded under this section.

Section 11 enacts a new section to provide that DED shall establish a small business investment program to provide grants to microloan delivery or microloan technical assistance organizations. Funds under this section shall be matched by nonstate funds equivalent to thirty-five percent of the grant funds requested. At least seventy percent of microloan funds shall be disbursed in microloans which do not exceed fifty thousand dollars and at least thirty percent of microloan funds shall be used by microloan development assistance organizations for small business technical assistance. At least five hundred thousand dollars but not more than one million dollars shall be awarded per year under this section.

Section 12 enacts a new section to provide the intent of the Legislature to appropriate \$7,000,000 from the General Fund to the Innovate Nebraska Cash Fund for each of fiscal years 2011-12 and 2012-13.

Section 13 enacts a new section to provide DED with rule and regulation authority to carry out the Business Innovation Act.

Section 14 enacts a new section to provide that DED may enter into a contract with a Nebraska-based nonprofit entity for the purposes of carrying out any or all of the provisions of the Business Innovation Act.

Section 15 enacts a new section to provide that DED shall submit an annual report to the Governor and the Legislature.

Section 16 enacts a new section to provide that the Business Innovation Act terminates on October 1, 2016.

Section 17 provides for an operative date of October 1, 2011.

Section 18 provides for the outright repeal of: sections 2-5413 to 2-5424, the Agricultural Opportunities and Value-Added Partnerships Act; sections 81-1295 to 81-12,105.01, the Microenterprise Development Act; and sections 81-12,125 to 81-12,128, the Building Entrepreneurial Communities Act.

The bill passed 49-0-0 on May 18, 2011 and was signed by the Governor on May 24, 2011.

### **LB387A (Hadley) Appropriation Bill**

**Enacted**

**Effective August 27, 2011**

This bill appropriates \$7,110,000 from the General Fund for FY2011-12 and for FY2012-13 to the Department of Economic Development to carry out LB387. The fiscal impact is partially offset by reductions and eliminations of existing programs appropriations.

The bill passed 49-0-0 on May 18, 2011 and was signed by the Governor on May 24, 2011.

### **LB388 (Wightman; at the request of the Governor) Adopt the Site and Building Development Act and change provisions relating to the Affordable Housing Trust Fund**

**Enacted**

**Operative October 1, 2011**

**Senator Priority Bill (Wightman)**

This bill enacts nine new sections to known as the Site and Building Development Act. The bill creates the Site and Building Development Fund to receive money from documentary stamp tax collections. One million dollars is to be transferred from the Affordable Housing Trust Fund to the Site and Building Development Fund in January of 2012 and in January of 2013. The bill provides that the Department of Economic Development (DED) shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development.

The bill creates the Industrial Recovery Fund to receive recaptured industrial site and building development grants that had been allocated but not utilized. The bill provides that DED shall use this fund to assist a political subdivision impacted by a sudden and significant private-sector entity closure or downsizing that will have a significant impact.

#### SUMMARY

Section 1 enacts a new section to provide for a named act: the Site and Building Development Act.

Section 2 enacts a new section to provide for legislative findings.

Section 3 enacts a new section to provide for creation of the Site and Building Development Fund, which shall receive funds from documentary stamp tax collections, and also appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. This section provides that DED shall administer this fund. This section provides that the State Treasurer shall transfer \$1,000,000 from the Affordable Housing Trust Fund to the Site and Building Development Fund between January 1, 2012 and January 10, 2012 and between January 1, 2013 and January 10, 2013.

Section 4 enacts a new section to provide that DED shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development.

Section 5 enacts a new section to provide that governmental subdivisions and Nebraska nonprofit organizations are eligible to receive assistance under the Site and Building Development Act.

Section 6 enacts a new section to provide that DED shall annually allocate not less than forty percent of available funds to nonmetropolitan areas, which would be defined as counties with fewer than one hundred thousand inhabitants.

Section 7 enacts a new section to provide DED with rule and regulation authority to carry out the Site and Building Development Act.

Section 8 enacts a new section to provide that DED shall submit annual reports to the Legislature.

Section 9 enacts a new section to provide for creation of the Industrial Recovery Fund, to be administered by DED. This section provides that DED may provide assistance from this fund to a political subdivision impacted by a sudden and significant private-sector entity closure or downsizing. This section provides that the fund shall consist of funds which were recaptured by DED because they had been allocated for an eligible industrial site and building development grant but then were not utilized. This section provides that funds shall not be remitted to the fund at times when the balance exceeds one million dollars.

Section 10 amends section 58-702 of the Nebraska Affordable Housing Act to provide legislative findings.

Section 11 amends section 58-703 of the Nebraska Affordable Housing Act to provide that transfers may be made from the Affordable Housing Trust Fund to the Site and Building Development Fund at the direction of the Legislature.

Section 12 amends section 58-706 of the Nebraska Affordable Housing Act to provide that demolition of existing vacant, condemned, or obsolete housing or industrial buildings or infrastructure are activities eligible for assistance from the Affordable Housing Trust Fund.

Section 13 amends section 58-708 of the Nebraska Affordable Housing Act to provide that DED may recapture funds allocated to industrial site and business development grants, but which were not utilized, and that recaptured funds shall be credited to the Industrial Recovery Fund as provided in new section 9 of the bill.

Section 14 amends section 76-903 of the documentary stamp tax statutes to provide that of each one dollar and seventy-five cents remitted to the state, twenty-five cents shall be remitted to the Site and Building Development Fund and ninety-five cents rather than one dollar and twenty cents shall be remitted to the Affordable Housing Trust Fund. The amounts remitted to other funds are not changed.

Section 15 provides for an operative date of October 1, 2011.

Section 16 provides for the repealers of the amendatory sections.

The bill passed 46-0-3 on April 20, 2011 and was signed by the Governor on April 26, 2011.

### **LB388A (Wightman) Appropriation Bill**

#### **Enacted**

#### **Effective August 27, 2011**

This bill appropriates \$2,028,000 for FY2011-12 and \$3,028,000 for FY2012-13 from the Site and Building Development Fund to the Department of Economic Development to carry out LB388.

The bill appropriates \$275,000 for FY2011-12 and \$275,000 for FY2012-13 from the Industrial Recovery Fund to the Department of Economic Development to carry out LB388.

The bill passed 46-0-3 on April 20, 2011 and was signed by the Governor on April 26, 2011.

**LB404 (Pirsch) Change reporting provisions relating to the Department of Economic Development**

**Enacted**

**Operative January 1, 2012**

**Speaker Priority Bill**

This bill amends section 81-1201.11 to provide that the Department of Economic Development shall include in its annual status report, which it must submit to the Governor and the Legislature, information detailing the status of all programs administered by the department for which the Legislature requires reporting. The bill requires that the status report shall be submitted on the first working day of July rather than the first working day of October. (Section 4 of the bill.)

The bill amends section 2-5422 of the Agricultural Opportunities and Value-Added Partnerships Act, section 13-2709 of the Civic, Cultural, and Convention Center Financing Act, section 58-711 of Nebraska Affordable Housing Act, section 81-1205 of the job training grant statutes, section 81-1277 of the Business Development Partnership Act, section 81-12,104 of the Microenterprise Development Act, section 81-12,135 of the Nebraska Operational Assistance Act, and section 81-3605 of the Rural Development Commission statutes to provide that annual report requirements in those sections shall be included in the department's annual status report. (Sections 1 to 3 and 5 to 9 of the bill.)

The bill provides for an operative date of January 1, 2012. (Section 10 of the bill.)

The bill passed 44-0-5 on May 10, 2011 and was signed by the Governor on May 16, 2011.

NOTE: Sections 2-5422 and 81-12,104 were outright repealed by LB387.

**LB434 (Pahls) Terminate the Business Development Partnership Act and change funding**

**Pending in Committee**

This bill would amend sections 81-1272 and 81-1274 of the Business Development Partnership Act to provide that beginning fiscal year 2011-12, no General Funds shall be appropriated to carry out the Business Development Partnership Act, and that the Business Development Partnership Act will sunset on January 1, 2015.

This bill was a result of the work of the Banking, Commerce and Insurance Committee pursuant to the process established for standing committees under legislative resolution LR542 during the 2010 interim.

**LB435 (Pahls) Create the Business Ombudsman Division of the Department of Economic Development**

**Withdrawn**

This bill would amend sections 81-1201.01, 81-1201.03, 81-1201.07, and 81-1201.20 and enact a new section to create a new Business Ombudsman Division within the Department of Economic Development.

The bill would provide that the Business Ombudsman Division shall provide assistance to any business that is subject to the regulatory authority of any state agency.

The bill would provide that the Business Ombudsman Division may act as an ombudsman, advocate, intervenor, mediator, or assistant to the business seeking assistance and may communicate concerns of the business to the state agency and may assist in mediating differences between the business and the state agency that have arisen as a result of the agency's regulatory authority over the business.

The bill would provide that personnel and agents of every state agency shall cooperate with the Business Ombudsman Division's communication and mediation efforts on behalf of a business.

**LB448 (Pahls) Change funding for the Nebraska Visitors Development Act**

**Pending in Committee**

This bill would amend section 81-1252 of the Nebraska Visitors Development Act to provide that beginning fiscal year 2011-12, no General Funds shall be appropriated to carry out the Nebraska Visitors Development Act.

This bill was a result of the work of the Banking, Commerce and Insurance Committee pursuant to the process established for standing committees under legislative resolution LR542 during the 2010 interim.

**LB453 (Pahls) Eliminate the Tourist Promotion Fund**

**Enacted**

**Effective August 27, 2011**

This bill outright repeals section 81-1211 in order to eliminate an obsolete cash fund – the Tourist Promotion Fund, which had not had funds in it since fiscal year 1997-98.

The bill passed 44-0-5 on May 12, 2011 and was signed by the Governor on May 18, 2011.

**LB454 (Pahls) Eliminate obsolete provisions relating to certain property controlled by the Department of Economic Development**

**Enacted**

**Effective August 27, 2011**

The bill outright repeals sections 81-1222.01 and 81-1222.03 in order to eliminate obsolete provisions relating to property no longer controlled by the Department of Economic Development.

The bill passed 47-0-2 on May 12, 2011 and was signed by the Governor on May 18, 2011.

**LB455 (Pahls) Repeal the Venture Capital Network Act**

**Enacted**

**Effective August 27, 2011**

This bill outright repeals sections 81-1265 to 81-1271 in order to eliminate obsolete provisions regarding a venture capital network.

The bill passed 48-0-1 on May 12, 2011 and was signed by the Governor on May 18, 2011.

**LB684 (Schilz) Change provisions relating to an advisory committee for travel and tourism**

**Enacted**

**Effective August 27, 2011**

**Speaker Priority Bill**

This bill amends section 81-1201.13 to provide that the advisory committee which is required by this section to provide consultation to the Travel and Tourism Division of the

Department of Economic Development (DED) shall be named the Travel and Tourism Division Advisory Committee.

The bill provides that the advisory committee shall, at a minimum, include (1) one representative from the Game and Parks Commission, (2) one representative from the Nebraska Travel Association, (3) one representative from the Nebraska Hotel and Motel Association, (4) one representative from a tourism attraction that records at least two thousand out-of-state visitors per year, and (5) one representative from the Nebraska Association of Convention and Visitors Bureaus.

The bill provides that the advisory committee shall develop a statewide strategic plan to cultivate and promote tourism in Nebraska, including (1) a review of the existing and potential sources of funding for tourism at the state and local levels, (2) a comprehensive inventory of local tourism boards, their structure, and their funding, (3) criteria for local tourism boards in terms of appointments to such boards and for awarding grants by such boards, (4) an examination of other states' funding models for tourism, (5) marketing strategies for promoting tourism, (6) a proposal for creating new or expanding existing tourism capacity, and (7) recommended legislation or funding requirements.

The bill provides that DED may hire a consultant to assist the advisory committee in developing the statewide strategic plan.

The bill provides that the advisory committee shall prepare and present the statewide strategic plan to the Legislature by September 1, 2012.

The bill passed 48-0-1 on May 18, 2011 and was signed by the Governor on May 24, 2011.

## **LB684A (Schilz) Appropriations Bill**

**Enacted**

**Effective August 27, 2011**

This bill appropriates \$75,000 for FY2011-12 and \$0 for FY2012-13 from the State Visitors Promotion Cash Fund to the Department of Economic Development to carry out LB684.

The bill passed 49-0-0 on May 18, 2011 and was signed by the Governor on May 24, 2011.

## **EDUCATIONAL FINANCE**

### **LB424 (Lautenbaugh) Change bond liability provisions under the Nebraska Educational Finance Authority Act**

#### **Enacted**

#### **Effective August 27, 2011**

This bill amends section 85-1738 of the Nebraska Educational Finance Authority Act to provide that members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. The bill provides that members of the authority and any person executing policies of insurance, as well as executing bonds, shall not be liable personally thereon. The bill provides that the authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member.

The bill passed 47-0-2 on May 12, 2011 and was signed by the Governor on May 18, 2011.

## TRADE NAMES

### **LB462 (Pirsch) Change provisions relating to trade names**

#### **Enacted**

#### **Effective August 27, 2011**

This bill amends section 87-217 of the trade name statutes (Chapter 87, article 2) to provide that in a court proceeding brought against the use, display, or sale of any counterfeits or imitations of a registered trade name by the registrant, the court may require the defendant to pay statutory damages of one thousand dollars and attorney's fees in lieu of the existing remedies of an award of profits attributable to or damages caused by the wrongful use, display, or sale, or both, and reasonable attorney's fees.

The bill outright repeals section 87-220 which made it a Class V misdemeanor (maximum: \$100; minimum: none) to engage in or transact business under an unregistered trade name.

The bill amends various sections in the trade name statutes and also in Chapters 21, 67, and 84 in order to harmonize internal references.

The bill passed 47-0-2 on March 4, 2011 and was signed by the Governor on March 10, 2011.

## **UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS**

### **LB90 (Harr) Change provisions relating to secured transactions under Article 9 of the Uniform Commercial Code**

#### **Enacted**

**Operative July 1, 2013**

#### **Committee Priority Bill (Banking, Commerce and Insurance Committee)**

This bill enacts the 2010 amendments to Uniform Commercial Code (UCC) Article 9 (“2010 amendments”) as adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and recommended to the states for enactment.

UCC Article 9 governs secured transactions in personal property. It was substantially revised in 1998 and now Revised UCC Article 9 is in effect in all states and the District of Columbia. Nebraska enacted Revised UCC Article 9 in 1999 and it became operative in 2001.

The 2010 amendments modify existing UCC Article 9 to respond to filing issues and address other matters that have arisen in practice after a decade of experience.

Of most importance, the 2010 amendments provide greater guidance as to the name of the individual debtor to be provided on a financing statement. The 2010 amendments provide that, if the debtor holds a driver’s license issued by the state where the financing statement is filed, the debtor’s name as it appears on the driver’s license is the name required to be used on the financing statement. If the debtor does not have such a driver’s license, either the debtor’s actual name or the debtor’s surname and first personal name may be used on the financing statement.

The 2010 amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor’s name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent’s estate. Some extraneous information currently provided on financing statements will no longer be required.

In addition, the 2010 amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

The 2010 amendments also contain a number of technical changes that respond to issues arising in the marketplace and contain a set of transition rules.

LB90 also contains clean-up and correction changes adopted by NCCUSL in 2001.

The bill passed 44-0-5 on April 8, 2011 and was signed by the Governor on April 14, 2011.

### **LB90A (Harr) Appropriation Bill**

#### **Enacted**

#### **Effective August 27, 2011**

This bill appropriates \$44,480 from the Uniform Commercial Code Cash Fund for FY2012-13 to the Secretary of State to carry out LB90.

The bill passed 44-0-5 on April 8, 2011 and was signed by the Governor on April 14, 2011.

BANKING, COMMERCE AND INSURANCE COMMITTEE  
INTERIM STUDY RESOLUTIONS  
2011

LR85 (Pahls) Interim study to determine how insurance laws should be amended by the Legislature to respond to the provisions of the federal Patient Protection and Affordable Care Act

LR138 (Nordquist) Interim study to find a solution to the exit of insurers from the health insurance marketplace for stand-alone health insurance policies for children

LR197 (Nordquist) Interim study to examine issues relating to the implementation of an all-payer claims database in Nebraska (Health and Human Services with Banking, Commerce and Insurance)

LR200 (Pahls) Interim study to determine whether insurance laws should be amended to provide that insurance providing coverage to an operator of a motor vehicle not owned by the operator shall be primary to any insurance or self-insurance providing coverage to the motor vehicle

LR219 (Pahls) Interim study to examine insurance coverage of services to treat individuals with autism

LR235 (Conrad) Interim study to determine whether Nebraska should enact the Revised Uniform Unincorporated Nonprofit Association Act (2008)

LR238 (Langemeier) Interim study to examine whether Nebraska should update its statutory provisions regarding the regulation and business organization of firms and individuals rendering professional services

LR240 (Mello) Interim study to examine issues surrounding direct repair programs operated by insurers

LR258 (Price) Interim study to examine the availability of technology to provide the electronic request and approval of prior authorization requests for medical and pharmacy interventions (Health and Human Services with Banking, Commerce and Insurance Committee)

LR270 (Nordquist) Interim study to examine the current state of health insurance coverage in the State of Nebraska (Health and Human Services with Banking, Commerce and Insurance Committee)

LR280 (McCoy) Interim study to examine whether insurance laws should be amended to protect homeowners from home improvement or home repair contractor fraud as it relates to insurance claims

REPORT ON THE PRIORTIZING  
OF INTERIM STUDY RESOLUTIONS  
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Banking, Commerce and Insurance

DATE: May 23, 2011

The following resolutions were referred to the Committee on Banking, Commerce and Insurance. The committee has prioritized the resolutions in the following order:

<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
LR85	Federal Patient Protection and Affordable Care Act
LR238	Regulation and business organization of firms and individuals rendering professional services
LR138	Exit of insurers from the health insurance marketplace for stand-alone health insurance policies for children
LR235	Revised Uniform Unincorporated Nonprofit Association Act
LR200	Insurance providing coverage to an operator of a motor vehicle not owned by the operator shall be primary to any insurance or self-insurance providing coverage to the motor vehicle
LR240	Examine issues surrounding direct repair programs operated by insurers
LR280	Protect homeowners from home improvement or home repair contractor fraud as it relates to insurance claims
LR219	Examine insurance coverage of services to treat individuals with autism
LR197	Examine issues relating to the implementation of an all-payer claims database in Nebraska
LR270	Examine the current state of health insurance coverage in the State of Nebraska
LR258	Examine the availability of technology to provide the electronic request and approval of prior authorization requests for medical and pharmacy interventions

